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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,058	07/27/2001	Martha M. Murray	18989-001 CIP (BWH-1CIP)	2028

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EXAMINER

PELLEGRINO, BRIAN E

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

NYK

Office Action Summary	Application No. 09/917,058	Applicant(s) MURRAY ET AL.	
	Examiner Brian E Pellegrino	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 and 22-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>8</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Election/Restrictions***

Applicant's election with traverse of the restriction requirement in Paper No. 9 is acknowledged. The traversal is on the ground(s) that the search would not require a burden on the examiner. This is not found persuasive because the search for the prosthesis would not necessarily require a search in the class for the composition. The same would be true for the composition, that a search would not necessarily be required in the class of the prosthesis. The search for the prosthesis also is not required in the method claims since a scaffold is used. With respect to the species requirement, since applicant has not submitted evidence or identified such evidence of record that the species and subspecies to be obvious variants or clearly admit on the record that this is the case, the restriction is maintained.

The requirement is still deemed proper and is therefore made FINAL.

Specification

Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein *the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof*. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

The abstract of the disclosure is objected to because it is too short. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Medlen (WO 85/00511) in view of Bell et al. (6153292) and MacPhee et al. (6117425). Medlen discloses an implantable prosthesis for repairing a ligament defect with collagen used as a repair material and a mechanical bond using sutures is used in the method, page 14, lines 26-33. However, Medlen does not disclose using collagen I, or a protein, a neutralizing agent or a platelet in the composition. Bell et al. teach that collagen I and also a neutralizing agent (an acid) are used in connective tissue implants,

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col. 5, lines 29-37. Bell also teaches to include proteins in the extracellular matrix, col. 11, lines 38-45. MacPhee et al. teach that platelets are added to tissue repair implants to induce healing, col. 12, lines 13-18, col. 23, lines 32-40. It would have been obvious to one of ordinary skill in the art to substitute collagen I with a neutralizing agent and a protein as taught by Bell and also include platelets as taught by MacPhee et al. in the method of repairing a ligament tear by Medlen in order to provide a more natural implant.


Claims 19,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li et al. (WO 93/21857) in view of MacPhee et al. (6117425). Li et al. disclose a prosthetic ligament made of collagen I, page 14, paragraph 3. Li also discloses using a neutralizing agent with the collagen, page 15, paragraph 4 – page 16, paragraph 2. Li additionally discloses that proteins can be added with the collagen material, page 20, paragraph 3. However, Li et al. do not disclose using a platelet in the collagen material. MacPhee et al. teach that platelets are added to tissue repair implants to induce healing, col. 12, lines 13-18, col. 23, lines 32-40. It would have been obvious to one of ordinary skill in the art to incorporate platelets in the collagen material as taught by MacPhee et al. in the method of repairing a ligament tear by Li et al. in order to encourage a natural healing response.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Pellegrino whose telephone number is (703) 306-5899. The examiner can normally be reached on Monday-Thursday from 8am to 5:30pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at (703) 308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-2708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Brian E. Pellegrino
TC 3700, AU 3738
January 24, 2003


Paul Prebilic
Primary Examiner